

November 15, 2021

Via Electronic Mail/Filing

Ms. Jocelyn Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia SC 29210

Re: Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to
Request the Commission to Hold a Joint Hearing with the North Carolina Utilities
Commission to Develop Carbon Plan, **Docket No. 2021-349-E**

Dear Ms. Boyd:

On behalf of Google, LLC ("Google"), I write to briefly follow up in response to the November 12, 2021, and November 15, 2021 letters of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, "Duke"), which request an *ex parte* briefing before the Commission.

While Duke cites to the routine nature of such briefings, there is very little about the subject Docket that will be routine. Both the procedural and substantive matters at issue in Docket 2021-349-E are unique and consequential. Handling such issues through the regular presentation of comments, responses, testimony, evidence, and ultimately hearing involving all parties furthers the interests of transparency, fairness, and judicial economy in this proceeding. To commence such a consequential proceeding with a one-sided Duke *ex parte* briefing to the Commission, in which other parties have no opportunity to cross examine the Duke personnel, or present their own witnesses, is an unfair head start to Duke in what is likely to be a heavily litigated proceeding. Further, because the subject of the briefing will likely also cover the unique request at the heart of the proceeding (i.e., that the Commission join in a multistate proceeding dealing with North Carolina law in which the Chair of the North Carolina Utilities Commission presides), there is a risk that the briefing inadvertently implies an ultimate decision on the merits. See S.C. Code Ann. § 58-3-260(C)(6)(a)(iii)(effectively prohibiting briefings from influencing commissioners' decision on issues in a proceeding).

November 15, 2021
Page 2

Duke suggests that Google is trying to limit Duke's "lawful provision of information to the Commission..." **Whether or not Duke's proposed provision of information to the Commission is "lawful" is not the issue before the Commission as to the *ex parte* briefing choice: rather, the issue is whether the Commission chooses to exercise its complete discretion under S.C. Code Ann. § 58-3-260(C)(6)(d) to allow any *ex parte* briefing in the first place.** While an *ex parte* proceeding may be lawful at this procedural point in time, that is not to say it would be jurisprudentially recommended. The Commission's decision on the *ex parte* briefing is entirely discretionary under S.C. Code Ann. § 58-3-260(C)(6)(d). **No party has a right to an *ex parte* briefing, but rather the briefings are entirely permissive and within the Commission's discretion.** See *Id.* An *ex parte* briefing is not the ideal way to commence what will likely be a heavily contested matter, particularly where multiple parties object to the briefing. The Commission's statutory discretion would be better used to deny Duke's *ex parte* briefing request and, instead, order a reasonable hearing schedule which allows for Duke and all other parties to present and provide comments and evidence for the Commission's consideration in the normal course.

To the extent the Commission might consider a briefing from any party in this matter, Google agrees with the position of Carolinas Clean Energy Business Association ("CCEBA") that no briefing should occur, if ever, until after the parties have had a reasonable opportunity to file responsive pleadings on the threshold question of whether a joint two state proceeding should even occur. Such a progression would promote fairness by informing the Commission of the views of all interested parties, possibly obviating the need for any *ex parte* hearing at all.

Very Truly Yours,



Weston Adams, III

WA, III:cew
Counsel of record (via e-mail/e-filing)